

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEORGINA JOAN GYURISKA,

Plaintiff,

v.

DUNMORE SCHOOL DISTRICT, et al.,

Defendant.

3:14-CV-01955
(JUDGE MARIANI)

FILED
SCRANTON
APR 06 2015
PER _____
DEPUTY CLERK

ORDER

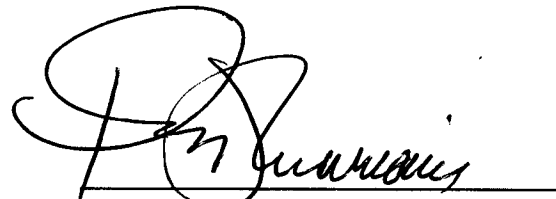
AND NOW, THIS 6th DAY OF APRIL, 2015, upon review of Magistrate Judge Carlson's Report and Recommendation for clear error and manifest injustice, **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 8) is **ADOPTED, BUT ONLY AS MODIFIED HEREIN.**
2. The Court agrees with the legal analysis in Magistrate Judge Blewitt's Opinion (Doc. 3), which *sua sponte* ordered Plaintiff to submit an Amended Complaint. That is, the Court agrees that the Complaint, as currently written, does not adequately meet the standards for pleading a Complaint discussed in Judge Blewitt's Opinion and in Magistrate Judge Carlson's Report and Recommendation. However, the narrative attachment to the Complaint, entitled "Exhibit 2: Affidavit of Georgina Joan Gyuriska," which the Court can consider at the pleading stage, see *Pension Benefit Guar. Corp. v. White Consol. Industries, Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993), states facts

which could allow Plaintiff to assert some or all of the causes of action in her Complaint if those causes of action were properly pled in a way that conforms with the statements of the law set forth in Judges Blewitt and Carlson's respective memoranda.

3. Given the above, the Court finds that dismissal for failure to prosecute would be premature. Judge Blewitt's Opinion ordered Plaintiff to submit an amended complaint without going through the ordinary Report and Recommendation process, which would have given the Plaintiff time to object to his findings and thereby puts her case in a different posture than most similarly-situated *pro se* litigants, for whom this Court ordinarily has the opportunity to rule on the merits of a Report and Recommendation recommending dismissal. Therefore, rather than dismiss for failure to prosecute, the Court will dismiss the Complaint with one final opportunity to amend in a manner that cures the deficiencies cited in Judges Blewitt and Carlson's memoranda. By following this procedure, Plaintiff will gain the benefit of having both her Complaint and Amended Complaint evaluated through the Report and Recommendation process to the District Court, which better advances the interests of justice than outright dismissal as of today's date. Plaintiff is nonetheless put on notice that failure to file an amended complaint may lead to dismissal for failure to prosecute.
4. Plaintiff's Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND.**

5. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) is **GRANTED**.
6. Plaintiff shall have **TWENTY-ONE (21) DAYS** from the date of this Order in which to file an Amended Complaint.
7. The case is **REMANDED** to Magistrate Judge Saporito for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge